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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/657,485

09/08/2003

Amrit P. Bindra

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08/31/2004

AMIN & TUROCY, LLP

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CLEVELAND, OH 44114

EXAMINER

GREEN, ANTHONY J

ART UNIT

PAPER NUMBER

1755

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,485

Applicant(s)

BINDRA, AMRIT P.

Examiner

Anthony J. Green

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 10 and 13-15 is/are allowed.
- 6) ☒ Claim(s) 1-8, 11, 12 and 16-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/08/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-8, 11-12 and 16-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 3 and 4 the phrases "major amount" and "minor amount" are vague and indefinite as "major" and "minor" are relative terms.

In claims 11 and 12 the phrase "minor amount" is vague and indefinite as "minor" is a relative term.

In claims 16 and 18-27 the phrases "major amount" and "minor amount" are vague and indefinite as "major" and "minor" are relative terms.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by the compound known as CAS Registry Database compound #250639-69-1.

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The database teaches a compound having the cited formula. While it doesn't recite the x-ray diffraction pattern, it is believed that the claimed x-ray diffraction pattern is inherent in the compound as the formula is the same.

5. Claims 1-2 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by FDA Docket No. 99F-2080 (Engelhard Corp.; Filing of Food Additive Petition) found in the Federal Registry Volume 64, No. 128, page 36361 (July 6, 1999)

The reference teaches a solution of 1-naphthalenesulfonic acid, 2-[2(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[4-chloro-5-ethyl-2-sulfophenyl]azo]-6-hydroxy-strontium salt (1:1) also known as C.I. Pigment Red 277 which is used as a colorant for polymers intended for use in contact with food. While the reference does not recite the x-ray diffraction of the 1-naphthalenesulfonic acid, 2-[2(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-strontium salt (1:1) compound since this compound possesses the same formula as that instantly claimed it is believed that the x-ray diffraction pattern of the compound would inherently be the same. With respect to claim 17 since some of the plastic materials recited as known to be used with food, this claim is anticipated by the reference.

6. Claims 1-2 and 16-17 are rejected under 35 U.S.C. 102(b) as being anticipated by the US Food and Drug Administration article entitled "Inventory of Effective Premarket Notifications for Food Contact Substances".

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The reference teaches a solution of 1-naphthalenesulfonic acid, 2-[2(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-strontium salt (1:1) and 2-naphthalenesulfonic acid, 5-[4-chloro-5-ethyl-2-sulfophenyl)azo]-6-hydroxy-strontium salt (1:1) also known as C.I. Pigment Red 277 which is used as a colorant for polymers intended for use in contact with food see FCN No. 23. While the reference does not recite the x-ray diffraction of the 1-naphthalenesulfonic acid, 2-[2(2-hydroxy-6-sulfo-1-naphthalenyl)azo]-strontium salt (1:1) compound since this compound possesses the same formula as that instantly claimed it is believed that the x-ray diffraction pattern of the compound would inherently be the same. With respect to claim 17 since some of the plastic materials recited as known to be used with food, this claim is anticipated by the reference.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 20, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over compound known as CAS Registry Database compound #250639-69-1 in view of FDA Docket No. 99F-2080 (Engelhard Corp., Filing of Food Additive Petition) found in the Federal Registry Volume 64, No. 128, page 36361 (July 6, 1999) and the US Food and Drug Administration article entitled "Inventory of Effective Premarket Notifications for Food Contact Substances".

The references were discussed above.

While the primary reference does not teach that it is known as a pigment this fact is known from the 2 secondary references which teach that it is known as a colorant for polymers for use in contact with food. Accordingly since it is known to use compound #250639-69-1 as a pigment it would have been obvious to one of ordinary skill in the art in the absence of evidence to the contrary to use it as a pigment in materials other than polymers for use in contact with food without producing any unexpected results as it is well known in the art to add various pigments to coating compositions, inks, and electrostatic toners in order to color them.

9. Claims 20, 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over compound known as FDA Docket No. 99F-2080 (Engelhard Corp.; Filing of Food Additive Petition) found in the Federal Registry Volume 64, No. 128, page 36361 (July 6, 1999) and US Food and Drug Administration article entitled "Inventory of Effective Premarket Notifications for Food Contact Substances.

The references were discussed above.

While the references do not teach that the pigments are used to pigment materials other than polymer for use in contact with food, it would have been obvious to one of ordinary skill in the art in the absence of evidence to the contrary to use it as a pigment in materials other than polymers for use in contact with food without producing any unexpected results as it is well known in the art to add various pigments to coating compositions, inks, and electrostatic toners in order to color them.

***Allowable Subject Matter***

10. Claims 9-10 and 13-15 are allowable over the prior art of record as the prior art fails to teach and/or fairly suggest the instant process.
11. Claims 4-8, 11-12, 18-19, 21-22, 24-25 and 27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
12. Claim 3 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Information Disclosure Statement***

13. The remaining references cited by applicant have been considered however they are not seen to teach and/or fairly suggest the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark L. Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony J. Green  
Primary Examiner  
Art Unit 1755

ajg  
August 27, 2004